No. 80-

In t
Supreme Court of

October Te

JOAN FISCHE

vs.

WILLIAM W

REPLY BRIEF IN
PETITION FOR WRIT
THE WISCONSIN CO

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of the Alabama judgments submitted by Mrs. Wrigley in Wisconsin, both Devine and Dexheimer entered general appearances in the Alabama proceedings (App. 46-47; 55-56); they "appeared" and the resulting decrees are therefore entitled to full faith and credit.

Mr. Wrigley attempts to circumvent the holding of *Cook* by arguing that whether a party "appeared" in the prior proceeding is a factual question that may be relitigated in a later collateral attack. He argues that because the Wisconsin court "*found as fact* that neither Dexheimer nor Devine appeared or participated in either proceeding" the decrees are not entitled to recognition in Wisconsin. (Resp. Br. at 14, emphasis added.)

Mr. Wrigley misinterprets the language used by this Court in *Cook* and other cases. *See, e.g., Johnson* v. *Muelberger,* 340 U.S. 581, 587 (1951); *Sherrer* v. *Sherrer,* 334 U.S. 343, 355-56 (1948); *Coe* v. *Coe,* 334 U.S. 378, 384 (1948). Those cases do not hold that the issue whether a party "appeared" in a proceeding is a factual question to be decided by determining whether the party physically took a responsive pleading to the clerk's office and filed it. Nor do they hold that an "appearance" requires the party to be physically present at the courthouse during the proceedings. (See Resp. Br. at 2, 4.) *Cook* v. *Cook,* 342 U.S. 126, 127-28 (1951); *Johnson* v. *Muelberger,* 340 U.S. 581, 582 (1951); *Hartenstein* v. *Hartenstein,* 18 Wis. 2d 505, n.2, 118 N.W.2d 881, 885 n.2 (1963).* Rather, those cases make clear that the question whether a party "appeared" for purposes of due process is a legal one. The judgment of the Wisconsin court cannot be insulated from review

* The foonote in *Hartenstein* explains that an examination of the official transcript in *Johnson* v. *Muelberger* disclosed that the defendant spouse in that case did not appear physically, but only by counsel.

because it attempted to cast a finding of fact as a leg conclusion.

Secondly, Mr. Wrigley attempts to argue that the tw Alabama decrees were entered *ex parte* because they we not entered after "traditional adversary proceedings (Resp. Br. at 14-16.) Whatever "traditional adversa proceedings" may be, this Court has never established minimum level of adversial activity that must be achiev in order to render a decree bilateral and entitled to f faith and credit. Legal proceedings are frequently simp an avenue for changing legal relationships; they need n always be contentious. *See, e.g.,* Uniform Marriage a Divorce Act § 303 (providing for "no-fault" divorce).

Devine and Dexheimer physically executed the respo sive pleadings filed on their behalf in the Alabama pr ceedings (App. 19, Finding 12, App. 21, Finding 27), a did so knowingly and voluntarily. These facts are unc troverted. Both men appeared in the proceedings by fili their general appearances and submitting themselves the court's jurisdiction. (App. 46-47, 55-56.) They a bound, as a matter of law, by the judgments subsequen entered, and they are precluded from attacking those ju ments now, just as Mr. Wrigley is.

Finally, under the guise of restating the facts of case, Mr. Wrigley attempts to support the Wisconsin ju ment by making allegations of judicial misconduct on part of the judge who granted the Dexheimer dec (Resp. Br. at 5-6.) At the annulment trial, Mr. Wrig introduced evidence that F. O. Whitten, the judge w granted the Dexheimer decree in 1966, was convicted mail fraud in 1970 for issuing blank divorce decrees. Wrigley, however, adduced no evidence that the Dexhei decree was one of those issued in blank. Indeed, the t

court specifically found that "the evidence does not sustain the charge that the Dexheimer decree was one of these issued in blank to attorneys by Judge Whitten."* (App. 6.)

Contrary to the implications in Mr. Wrigley's brief, no evidence was adduced at trial that either of Mrs. Wrigley's prior divorce decrees was fraudulently obtained. The "evidence" set forth in Mr. Wrigley's statement of the case (Resp. Br. at 5), therefore, is absolutely irrelevant to the issues before this Court and should be disregarded.

II. THE DEVINE AND DEXHEIMER DECREES ARE NOT VOID UNDER ALABAMA LAW.

Apparently Mr. Wrigley recognizes that the ruling of the Wisconsin Court of Appeals that the decrees were entered *ex parte* is not a defensible basis for upholding the annulment decree, because he attempts to rely on a rationale not used by the Wisconsin Court of Appeals. He argues that the decrees are void under Alabama law, and therefore not entitled to faith and credit in Wisconsin. (Resp. Br. at 9-10.) Mr. Wrigley, however, fails to acknowledge that the Wisconsin Court of Appeals did not base its decision on Alabama law, and failed to cite a single Alabama case. Moreover, it is clear that the Devine and Dexheimer decrees are not void under Alabama law. *See, e.g., Aiello* v. *Aiello,* 272 Ala. 505, 510, 133 So. 2d 18, 21 (1961) (insufficiency of evidence to support a decree does not make decree void on its face).

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* Moreover, Judge Whitten was convicted for selling blank decrees to an attorney named John Ike Griffith. Griffith was not connected in any way to the Dexheimer proceedings. (App. 5-6.)

Mr. Wrigley attempts to rely on *Hartigan* v. 272 Ala. 67, 128 So. 2d 725 (1961), to support ment that the Devine and Dexheimer decrees under Alabama law. (Resp. Br. at 10.) The ur of *Hartigan,* however, have no application to th this case.* Moreover, subsequent Alabama deci conclusively put to rest any expansive reading of *See Weisner* v. *Weisner,* 282 Ala. 626, 628, 213 S 686 (1968); *Multer* v. *Multer,* 280 Ala. 458, 462, 105, 108 (1966); *Shapiro* v. *Shapiro,* 280 Ala. 1 190 So. 2d 548, 549-50 (1966); *Aiello* v. *Aiello,* 27 509-10, 133 So. 2d 18, 21 (1961); *see also Yerg* 281 Ala. 1, 198 So. 2d 282 (1967).

Unsurprisingly, every court that has consi validity of an Alabama divorce decree since *W Yerger* has upheld its validity. *See Donner* v. *L* So. 2d 452 (Fla. App. 1974) *cert. denied,* 314 (Fla. 1975); *Kingdon* v. *Foster,* 238 Ga. 37, 2 855 (1976), *cert. denied,* 431 U.S. 916 (1977); *Alikonis,* 36 Ill. App. 3d 159, 343 N.E.2d 161 1976); *see also Tippin* v. *Tippin,* 148 Conn. 1 448 (1960).

Mr. Wrigley attempts to distinguish these ca ing that they were not annulment actions. (R 12 n.10.) Both he and the trial court att distinguish between decisions that "set aside divorce decree and those that merely "annul"

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* Unlike the Hartigans, neither Devine, nor De Mrs. Wrigley has ever returned to the very Alaban granted their divorce decrees with statements that the mony was false, while simultaneously asking the court f relief from the judgment. Unlike the Hartigans, ne nor Dexheimer appeared as parties before the Wis Even Mrs. Wrigley was not there by choice; rather s as a defendant sued by her husband for an annulmen

(App. 14; Resp. Br. at 12-13.) None of the decision above, however, purported to make any such disti nor can one be made.

Incredibly, respondent asserts that the Wisconsi ment "had no effect on [the Devine and Dexheim crees." (Resp. Br. at 13.) Mr. Wrigley appears t the same limited view of the extraterritorial effect judgment of the Wisconsin court as he does of th ments of the Alabama courts. The effect of the W sin judgment cannot be limited to the geogr boundaries of that State. Unless reversed by this the Wisconsin judgment is entitled to full faith and in every state of the Union. As Mr. Wrigley poi in his brief, Wisconsin law provides for an annulmen a wife remarries despite the fact that she has a husband living from whom she is not divorced. Wi § 247.02(3) (1976). (Resp. Br. at 6.) The Wiscons court annulled the Wrigley marriage on that basis, that Mrs. Wrigley had an undivorved spouse living time of her marriage to William Wrigley. (App. 16 less this Court reverses, the Wisconsin judgment *judicata* and Mrs. Wrigley is collaterally estopped t the necessary factual bases upon which the dec founded. If the judgment stands, it will nullify th of the Alabama decrees and Mrs. Wrigley will sidered legally married, presumably to Devine.

CONCLUSION

The issues raised by the Wisconsin
decree touch more than just the partie
Given the mobility of our society and the
of persons who end their marriages w
vorces and eventually remarry, it will
more common for state courts to pass
of divorce decrees rendered by sister s
must be conducted within the firmest b
the strictest standards.

For all the reasons and authorities
tioner Joan Fisher Wrigley respectfully
Court grant the writ of certiorari and
of the Wisconsin Court of Appeals.

Respectfully

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